

Minutes of the Newberg City Council
August 16, 1999
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING - TRAINING ROOM

I. CALL MEETING TO ORDER

Mayor Cox called the meeting to order at 7:10 p.m.

II. ROLL CALL

Roger Currier (RC)
Donna McCain (DM)
F. Robert Weaver (RW)
Brett Veatch (BV)

Absent: Lisa Helikson
Vacant: Fred Howe's Position

Staff

Present: Duane R. Cole, City Manager (DRC)
Terrence D. Mahr, City Attorney (TDM)
Katherine Tri, Finance Director (KT)
Barton Brierley, Planning Director
Peggy Nicholas, Recording Secretary

Others

Present: Kelli Highley, Pat Haight, Nadine Windsor, Jeff Barry,

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CONSENT CALENDAR

Honor student liaison Stephanie McIntosh, the first member of the Council/Student Liaison program. She appreciated the opportunity for a valuable experience.

V. COMMUNICATIONS FROM THE FLOOR

Kelli Highley, 619 S. River Street, Newberg, said that during the Planning Commission meeting concerning the public hearing CPRD and the Second Street Community Church are building on the property. There were two different occasions at the Planning Commission wherein the Commission could have used the appearance of the City Attorney (division of church/state and another question Ms. Barbara Mingay had difficulty in answering). The availability of the appeal costs for the Planning Commission and LUBA filing fee (\$250). The appeal to the Planning Commission is \$600. Ms. Highley questioned why the Planning Commission and School District meetings are not video taped.

Ms. Highley also addressed the Springbrook Oaks Plan Specific Plan wherein the developer would be paid for expenses paid beforehand (development charges). Ms. Highley addressed fiscal impact of the Specific Plan. She also inquired if there has been any work in regard to the \$1M loan from the State and why borrowed so far ahead when no development has been done. Why didn't the City borrow more money to get other things done.

Ms. Pat Haight, 501 E. Illinois, #12, Newberg, said she attended the Planning Commission meeting, where the Planning Commission voted to allow at 3,000 sq. Ft building (public property) to be used mainly for church activities. She is upset and sickened.

TDM said this is quasi-judicial decision from the Planning Commission to be appealed to the City Council. The matter is quasi-judicial for the Planning Commission's decision (record). The other party has not been notified. Discussion was held concerning the appeal period (14 days). The Planning Commission had 3 public hearings in which the Planning Commission could have legal advice.

Councilor RC questioned said he could have attended the meeting, but he urged the Council to realize ex parte contact at this forum. It is informational for the public.

Nadine Windsor, 730 Foothills Drive, Newberg, discussed previous discussions about building on City park property would go to the vote of the people (about 20 years ago).

Discussion to be added to the testimony of the public hearing process. TDM address noticing to the other party and how the record is established for the other party to have the opportunity to rebut the comments made.

Councilor RC discussed the northern collector relating to vacating Aspen Way (southern portion) in lieu of property given to the City by Adec. Has the transaction been completed? He requested that staff provide such documentation. Any property the City sells, gives away must be before the vote of the people. TDM said he is not aware of anything which requires disposition of City property by a vote of the people. It does require public noticing. It also addresses the use of public parks and different scenarios of handling property.

Mr. Barton Brierley said that Aspen Way is a County road and the City does not have any jurisdiction.

VI. PUBLIC HEARING:

None.

VII. CONTINUED BUSINESS

1. Update on Water Strategy Plan

DRC reviewed the staff report. The reason for bringing up the Rainy Collector, the City would apply for a permit. The language contained the word "necessary" in House Bill 2865. The Oregon Farm Bureau, 1000 Friends of Oregon and the Governor's Office joined together to arrive at this revision. He further discussed EFU (Exclusive Farm Use) zoning to provide the service.

The applicant must show reasonable alternatives have been considered and that the facility must be sited in an EFU zone due to one or more of the following factors:

1. Technical or engineering.
2. Facility locality dependent.
3. Lack of available urban and non-resource lands.
4. Availability of existing rights of way.
5. Public health and safety.
6. Other issues:

1. Costs associated with any of the factors listed may be considered, but cost alone may not be only consideration in determining that a utility facility is necessary for public service. Discussion was held concerning DLCD.

2. Restoration of site, as nearly as possible to former condition is required.

3. County shall empower clear and objective conditions for utility siting to mitigate and minimize impacts of the proposed facility.

DRC reviewed the "necessary test" and the City's current water master plan (City to build 5 wells). Discussion was held concerning placing a Rainy collector in the area. The City's water is currently subsurface water. If a rainy collector is placed, the City needs to maintain subsurface rights (would have to change treatment). The City needs to know the impact of the current wells. The direction of the staff that is important is to apply for Well #7. Marion County will want to know what is going on and why go to Marion County and not just stay on City property? The permit process with Marion County may still be reviewed with the City and public to keep everyone informed.

Ms. Kelli Highley, 619 S. River Street, Newberg, said she is concerned over the past couple of years, the issue of Rainy Collector system is brought forward, don't want to drink water out of the Willamette. The subsurface aquifer is brought from the Willamette River. She said the issue of drinking the Willamette River processed water is a concern to other communities. She also addressed other chemical influences to the Willamette. She would request that the City dump the Rainy system due to the complications.

Ms. Pat Haight, 501 E. Illinois, #12, Newberg, discussed the Rainy application, which draws water from the Willamette River. Ms. Haight expressed concerns involving the sewage and toxins that are being dumped, the cancerous fish living in the water. Ms. Haight addressed a staff report concerning Wells 7 & 8. Ms. Haight addressed the health risks. She continued the discussion of the staff report which included the costs to pursue the wells.

Mr. Mike Soderquist, Community Development Director, provided additional information from the studies. He reviewed the history of the Ranney Collector system and the location of the existing wells. The reason for the cluster is because of the river in prehistoric times. There is a 60 foot level of gravel and provides good water source. Mr. Soderquist reviewed the actual workings of a collector system (Cason flowing and collecting water). He reviewed the Newberg well field previous Ranney Collector studies. He noted that the City of Tigard also commissioned an additional study in the same area the City of Newberg was interested in. He reviewed the 1968, 1983, 1993 and 1996 studies. He said that the City would like to test to confirm or refute the studies. Discussion was held concerning the well field expense and Ranney collector costs.

Councilor RC asked for clarification of the infiltration system.

Mr. Jeff Barry, CH2M Hill, reviewed the infiltration system, elevation and collecting the water. Councilor RC asked about how many gallons of infiltration will be made. Discussion was held concerning the well field master plan. DRC said the infiltration follows the old river bed to the north. Mr. Barry said that part of the study included the search for adequate source of water (high enough yield - 5 mgd). Mr. Barry reviewed other cities utilizing the Ranney system for the Columbia River.

Councilor BV discussed "catch" wells concerning testing of the wells and the testing of the aquifer.

Councilor RW questioned whether the flooding of the Willamette River would have an impact on the wells. Mr. Barry said it would have some impact, but the location of the wells would have a 70 feet variance of wells not running the risk of contaminants from surface water.

Councilor RC discussed the test holes. Mr. Barry noted that some of the holes were dry (channeling) and surface geotechnical results. Over the years, holes were drilled, but apparently missed the channels.

DRC said the purpose of the presentation is what the City feels that Marion County will look at and the future is a Ranney collector system. Discussion was held concerning the City's future plans for water sources.

Councilor RC said he has been against the Ranney system due to the river bank closeness. Putting a collector system near or underneath the river, with the possibility of infiltration downstream from Smurfit and WWTP is ludicrous. The City cannot filter out everything. He said he will vote against the Ranney collection system in the location proposed. DRC said that the City would not deliver any water that is not federally regulated and no intention of poisoning the water.

Mayor Cox called for a 5 minute break at 8:15 p.m. The meeting reconvened at 8:20 p.m.

VIII. NEW BUSINESS

Discussion was held concerning the Baker Rock appeal. TDM said that on July 30, 1999, the City received a decision from LUBA on the City of Newberg v. Yamhill County. LUBA remanded the decision to the County (assignment of error dealing with the air quality) to take evidence and have a hearing on that point. The City's Brief dealt with interpretation of City Ordinances, Comprehensive Plan, UGB, where the plant would be located, etc. LUBA did not sustain the City's other assignments of error. LUBA only did the air quality report. The County will have to take in additional testimony in order to approve the application. Baker Rock can ask that the hearing be held in hopes that the matter would be favorable. The City Council's action would be to take the matter to the Court of Appeals who may disagree with the LUBA decision and further review the City's other assignments of error. TDM further discussed the possibility of the City being found in favor would be very slight. If the Council does not direct the Council will file the appeal and the decision of LUBA would stand and the matter would be remanded to the County. The City of Dundee will review the matters. The City has indicated that they have requested that the testimony of the public would be important. The attorney for Baker Rock (Mr.

Parisi), article in the Graphic, referenced working with Baker Rock to sit down with the neighbors and see what can be worked out. The City Manager has placed on the September 7, 1999 Council agenda other alternatives for the project through other means.

Ms. Pauline Ogden, Newberg, Oregon, discussed the City purchasing the Baker Rock property. She doubts that Baker Rock would sell the property for a reasonable amount. She said that she would initiate a referendum to stop a sale if the sale price was too high. Ms. Ogden addressed the October, 1998 Planning Commission meeting involving the rezoning of the area of industrial to Riverfront district (Comprehensive Plan amendment). Ms. Ogden questioned the process in compiling information (public need) to find alternatives. She wrote to the County Commissioners who have indicated that they would have a public hearing on the matter.

Ms. Kelli Highley, 619 S. River Street, Newberg, There was a proposed Riverfront designation. One of the things she questions is if going to the State Court of Appeals would garner more grounds which would open the hearing to more options, it may be worth while. Ms. Highley said DEQ does not monitor all cities. She said that it is a risk worth taking for the community. Ms. Highley reviewed the documents from the State that the City entered into an agreement (02/98) if that transaction could have transpired without the vote of the people (land swap).

City Attorney said the matters that have come up since the decision of the County, the Court of Appeals has authority to insert them into the record. Only the County Commissioners all operate on the record already established at the local level. On the matter of the application originally filed, the City was discussing the lease of property. He is not aware of the Charter provision discussed (sale of City property), the public parks provision, and not the vote of the people. It does require a public hearing, not a vote of the people.

Councilor RW said this may be more of a problem for the City than Sumitomo. He has not talked with one person who has indicated that they are in favor of the asphalt plant.

Councilor RC said that no one wants the asphalt plant in the City. He wished the City followed through on the Comprehensive Plan update last year. Councilor RC urged the citizens of Newberg to write to the County Commissioners and request that they write back to them in answering their questions.

TDM discussed the County was going to hold another public hearing, but did not necessarily say that they were going to reopen the public record. Discussion was held concerning other viable options. TDM said the legal advice is based upon the likelihood of success. All the City would get would be the remand to the County Commissioners.

Discussion was held concerning the law that applies (record) at the time the application is made. Councilor RC questioned why the City was not pursuing alternative truck route system.

City Attorney TDM said the truck route system is based upon reasonable use. Further discussion was held concerning safety issues. Councilor RW discussed having a notice in the Graphic concerning the notice of the public hearing at the County level and to encourage citizens to appear at the hearing.

Mayor Cox said that the Council members appear to note that the City will do nothing about the appeal.

1. Deeming the Council position held by Alfred Howe vacant and advertising the position and scheduling interviews.

MOTION: RC/DM to deem the Council position held by Alfred Howe vacant. (5 Yes/1 Vacant/1 Absent LH). Motion carried.

Discussion was held concerning precinct 4 (south of First Street and West of Meridian Street). Anyone wishes to apply must have residence for the remainder of the 2 year term, registered voter, must live in the City for one year before taking office. The City Council will fill the vacancy.

2. Motion to authorize staff to apply, jointly with the Cities of Lafayette and Dundee, to the Oregon Department of Transportation for TEA-21 Transportation Enhancement Program funds to remove present street lighting and install pedestrian scale lighting (old fashioned style, as in Francis Square) along First Street from River Street to Main Street.

Mr. Barton Brierley provided a brief staff report. TEA 21 is a federally funded package which provides for enhancement. The first grant application the City was turned down by the State. Staff requests that the Council approve the filing of the application with the cities of Lafayette and Dundee. The application requires a match of the funds and the City would seek LID to help pay for the funding. Councilor RW asked how many lamps would be placed (both sides of the street). Mr. Brierley said that it would be 4 lights per walk.

MOTION: RW/DM to approve.

Councilor RC said that what bothers him is LID's and the majority of the Downtown Redevelopment Committee approving the project. The Committee has 13 members and does not appear to represent the entire downtown core area business owners (about 100). Councilor RC said it bothers him to go to the business owners and advise them. Discussion was held concerning the LID would require a majority of the land owners. The intent of the motion is to go ahead with the process.

ROLL CALL - Unanimous. Motion carried.

3. **Resolution No. 99-2194** authorizing the City Manager to sign the collective bargaining agreement between the City of Newberg Fire Department and International Association of Firefighters, Local 1660.

DRC briefly reviewed the staff report.

MOTION: RC/DM to approve. Unanimous. Motion carried.

4. **Resolution No. 99-2195** for the purpose of the affirmative defense established under Senate Bill 268, providing that a public entity makes a good faith effort to avoid Year 2000 failures of systems.

Ms. Katherine Tri reviewed the staff report. Ms. Tri noted that there is an additional \$25,000 emergency fund and emergency services. DRC said that the City staff has done an excellent job in preparing for Y2K.

MOTION: DM/RC to approve. (Unanimous). Motion carried.

Mayor Cox called for break at 9:15 p.m. The meeting reconvened the meeting at 9:20 p.m.

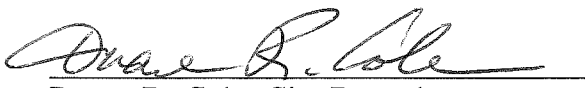
IX. EXECUTIVE SESSIONS

1. Executive Session pursuant to ORS 192.660(1)(d) relating to Labor Negotiations.
2. Executive Session pursuant to ORS 192.660(1)(h) relating to Pending Litigation.
3. Executive Session pursuant to ORS 192.660(1)(e) relating to a Real Property Transaction.

X. ADJOURNMENT

MOTION: RW/BV to adjourn at 9:21 p.m. Motion carried.

ADOPTED by the Newberg City Council this 6th day of March, 2000.


Duane R. Cole, City Recorder

ATTEST by the Mayor this 14 day of March, 2000.


Charles B. Cox, Mayor